

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

981047

FILE: B-186495

DATE: June 29, 1976

MATTER OF: Service Distributors, Inc.

98378

DIGEST:

Where protest of solicitation's small business set-aside restriction filed originally with contracting agency is filed with GAO after bid opening and more than 10 days after protester received notice of initial adverse agency action, it is untimely and not for consideration.

By letter dated June 7, 1976, filed in GAO on June 9, Service Distributors, Inc. protested the award of a contract under invitation for bids DAKF03-76-B-0034, issued April 20, 1976, by the United States Army at Fort Ord, California. Service Distributors, Inc. contends that this procurement was improperly set aside for small business participation.

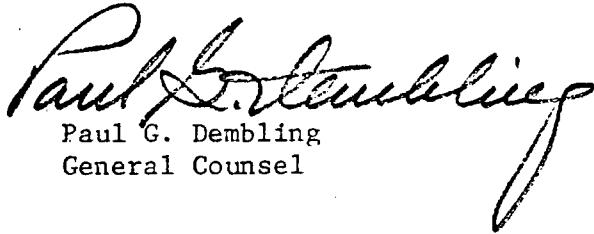
By letter dated April 27, 1976, Service Distributors, Inc. initially protested the solicitation's small business set-aside restriction to the Army and the Small Business Administration (SBA). In letters received by Service Distributors, Inc. on May 12, 1976, and May 17, 1976, the protester was notified by the SBA and the Army, respectively, that its protests had been denied. Meanwhile bid opening occurred on May 14, 1976.

Sections 20.2(a) and (b) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), state in pertinent part:

"(a) Protesters are urged to seek resolution of their complaints initially with the contracting agency. If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraph (b) of this section * * *.

"(b) Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. * * *"

Since Service Distributors, Inc.'s protest was not filed in this Office until June 9, 1976, which was after bid opening and more than 10 days after receipt of initial adverse agency action, it is untimely and not for consideration on the merits.


Paul G. Dembling
General Counsel